

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2653 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgment?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

KANU @ KANAIYA BANSILAL KANSARA, THRO' BHARAT B.KANSARA

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for the Petitioner.

Mr.A.D. Oza, GOVERNMENT PLEADER,
for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/07/2004

ORAL JUDGEMENT

By filing this petitioner, the petitioner has
challenged the detention order dated 26.12.2003. By the

impugned order, the brother of the petitioner is detained as a 'bootlegger' under the provisions of the Prevention of Anti-Social Activities Act, 1985 ("PASA", for short). Along with the order of detention, the detenu was also served with the grounds of detention.

In the grounds of detention, there is a reference about one registered criminal case against the petitioner. The said case is under the Bombay Prohibition Act. The petitioner was found to be in possession of illicit Indian Made Foreign Liquor, worth Rs.42,300/-. The detaining authority, after considering the material on record, has detained him under PASA.

Mr.Kapadia, learned Advocate for the petitioner, submitted that the petitioner was released on bail in connection with the said case on 26.12.2003 and on that very day, the detaining authority has detained him under PASA. According to him, it cannot be said that the detaining authority has applied his mind properly even regarding the bail order etc., of the petitioner, as, the order of detention was passed on the very same day. In this connection, the learned Advocate for the petitioner has relied on the decision of this Court in Ranubhai Bhikhabhai Bharwad v. State of Gujarat & Ors., XLI(3) GLR 2696, wherein this Court observed in paragraph 9 as under :-

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The statements of the three witnesses in the instant case which were recorded before the Police Inspector on 17th August 1999, 21st August 1999 and 25th August 1999 with regard to the incidents dated 10th July 1999, 13th June, 1999 and 26th June, 1999 were the material along with the proposal which is said to have been made on 27th August 1999 and it is clear from the record that it was on 29th August 1999 that the detaining authority has recorded its verification of all these three statements. There is nothing on record to show that the detaining authority had considered the proposal dated 27th August 1999 at any time prior to 29th August 1999 and on 29th August, 1999, all that has been done is that the concerned witnesses have stated before the detaining authority that the statements as had been made on the respective dates were correct and

immediately thereafter on the following day, i.e. on 30th August 1999 the detention order has been passed.

... .."

He also submitted that neither the names of witnesses were disclosed nor material particulars were furnished so as to enable the detenu to make effective representation before the detaining authority and it has deprived the detenu of his valuable right of making "effective representation". It was, therefore, argued that the privilege claimed under Section 9(2) of PASA was not well-founded. It is further submitted that there was nothing on record to withhold names and particulars of witnesses. Such privilege could not have been claimed and the action was illegal and the order of detention is liable to be quashed.

The learned Advocate for the petitioner submitted that this is a solitary incident and, therefore, it cannot be said that the petitioner is a habitual offender or that he has disturbed public order. He also further submitted that since this is the solitary incident, the petitioner should not have been detained under PASA. The learned Advocate for the petitioner placed reliance on the decision in Sandip Omprakash Gupta v. State of Gujarat and others, 2004(1) GLR 864, wherein a solitary offence under the Bombay Prohibition Act was registered against the detenu and the authority relied on two other unregistered offences based on statements of certain witnesses and, therefore, a learned single Judge of this Court held, on facts, that the detenu could have been dealt with under the ordinary criminal law. The order of detention passed therein, treating the petitioner as a bootlegger, is set aside. Since I am bound by the view taken by the learned single Judge, in view of the aforesaid ground about solitary incident of a registered case under the Bombay Prohibition Act, only on the basis of the aforesaid submission about solitary case lodged against the petitioner, which can be taken care under the ordinary criminal law, this petition is required to be allowed.

This petition is not resisted by the respondent by filing any reply nor any file is made available to the Court. All these grounds, therefore, are not denied, though taken in the petition. Since the averments in the petition are not denied and all the aforesaid contentions are not dealt with by any reply, the petition is required

to be allowed on the ground that the authority has not denied any of the grounds, nor has filed any reply as to on what material it has reached the subjective satisfaction of withholding of the names under Section 9(2) of PASA as well as considering the judgment also of the learned single Judge, referred to above, regarding solitary case, which cannot attract provisions of public order.

Accordingly, as the respondents are not in a position to meet with any of the contentions raised in the petition, the petition is allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. The Rule is made absolute accordingly.

6th July, 2004 (P.B. Majmudar, J.)

(apj)